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THE JUDICIAL OFFICE.

As one is apt in these times to hear overmuch of the faults and frailties of judges, and of judicial blindness (with or without cause and consideration therefor), it may be useful to quote some observations uttered from the judge's standpoint. Chief Justice Ryan, in a recent address to the law class of the University of Wisconsin, said:—

"On the bench, lawyers are charged with a higher grade of function, little more important than their duty at the bar. The bench necessarily depends much upon the bar. A good bar is an essential of a good court. The problems of justice can rarely be safely solved in solitary study. Forensic conflicts give security to the judgment of the law. The world sometimes scolds at the delay and uncertainty of the administration of justice. These are evils essential to our civilization, perhaps to any attainable civilization. But summary judgment is judicial despotism. Impulsive judgment is judicial injustice. The bench symbolizes on earth the throne of divine justice. The judge sitting in judgment on it is the representative of divine justice, has the most direct subrogation on earth of an attribute of God. In other places in life, the light of intelligence, purity of truth, love of right, firmness of integrity, singleness of purpose, candor of judgment, are relatively essential to high beauty of character. On the bench they are the absolute condition of duty; the condition which only can redeem judges from moral leprosy. When I was younger, I could declaim against the enormity of judicial corruption. I could not now. I have no heart for it. The mere words seem to have a deeper ignominy than the wisest brain and the most fluent tongue could put into other language. The judge who palters with justice, who is swayed by fear, favor, affection, or the hope of reward, by personal influence or public opinion, prostitutes the attribute of God, and sells the favor of his maker as atrociously and blasphemously as Judas did. But the light of God's eternal truth and justice shines on the head of the just judge, and makes it visibly glorious."

Chief Justice Ryan is particularly severe upon a specimen of lawyer for whom, indeed, no one has a kind word—the lawyer who is supposed to have access to the private ear of a judge, or, as the Chief Justice dubs him, the "professional adventurer who trades in judicial favor." The following portrait is too vivid not to be sketched from life:—

"He is almost always a dunce, a fellow of low intellect and vitality; of meagre life; of mean and selfish instincts and tastes, dull of head and cold of heart; of little passion and no impulse; so cold and clammy, that he might have been a fish; a creature whose lean brain and thin blood, cautious egotism and selfish greed, would fit him, as far as they go, for store or bank or factory, conducted on purely economic principles; but could fill no honest place in a lawyer's office. A quick-tempered or warm-hearted rogue could never fill the favorite's place. It requires a fellow of no pity to mitigate his thrift, and of no temper to betray his confederacy. So you find him a grave, quiet, sedate sharper; guarded, formal, presuming, dogmatic, with as little taste for fun as talent for honor. In his intercourse of business, he rarely speaks of his uncle, or father, or cousin, the judge; but he utters no words to client or adversary, in which the judicial influence is not implied, like the verb sometimes in grammar, which gives significance to the whole sentence. He is indignant at the slightest reference to the nepotism. But he is virtuous about expression only, the thing he wishes always understood. It is his stock in trade, his family estate."

SOLICITORS' LETTERS.

The *Solicitors' Journal* (London) has the following on this subject:—

"In letters written by one solicitor to another on ordinary business matters, nothing more appears to be necessary than clearness and conciseness, and a courteous assumption of the technical knowledge of the correspondent. The letter is to be read by a busy man; hence the meaning of the writer should be expressed in as few words as is consistent with perfect clearness. The writer must, first of all, be

sure that he has something to say, for this is pre-eminently a case in which, as Theophrastus Such has put it, 'Blessed is the man who, having nothing to say, abstains from giving us wordy evidence of the fact.' Having something to say, he must put it as shortly as he can. The difficulty is to be terse without being curt. It has often struck us that the young solicitor of the present day, accustomed as he is to telegrams, is inclined to fall into the error of rather rude curtness. This is not likely to lead to successful correspondence. A man who has written a letter explaining at some length his view of the course to be pursued, does not greatly appreciate a dry reply to the effect that the writer is unable to concur in the course suggested. A still more unwise mode of procedure is for the solicitor to assume a lofty air of superior knowledge in his communications with his professional brethren. There are certain members of the profession who are fond of the formula, 'Do you really contend that,' &c., or 'Do I understand you really to mean that,' &c., as though the writer were positively unable to credit the crass ignorance and stupidity of his correspondent. There are others who adopt what we have heard described as the 'great-coat and walking-stick' style of address. They are always referring to what they are pleased to call 'the common-sense view of the matter;' 'common-sense forbids them to believe'—what it is inconvenient for them to admit, and any view opposed to their own is condemned (in case arguments are lacking) as an exceedingly technical way of looking at the question. Now, an expert letter-writer holds it to be a cardinal maxim to treat his professional correspondents with respect. It is not safe to sit down to write a letter to a brother solicitor with the idea that he knows less law, or is less acute, than yourself. Some of the best letter-writers we know, like the greatest generals in history, invariably frame their tactics on the assumption that they are matched with an excessively clever, wily, and well-informed adversary."

—The *Law Times* says that recent expressions of judicial opinion tend to show that there is a growing feeling on the bench against the present system of trial by jury. Sir George Jessel considers it absurd to expect twelve men to be unanimous about anything.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, June 19, 1880.

ERICHSEN et al. (plffs. below), Appellants, and CUVILLIER et al. (defts. below), Respondents.

[Continued from p. 288.]

[RAMSAY, J., continued.]

Then follows an enumeration of properties which does not include the property in question.

Maurice Cuvillier, under this authority, renounced on the part of Mrs. Austin Cuvillier, to all the properties mentioned in the said last mentioned deed, and to no more, on the 28th January, 1867.

It is evident that the act of Maurice Cuvillier cannot affect the question, and that unless Mrs. Austin Cuvillier's declaration of her intention to take advantage of the donation was in itself a renunciation, none exists. There cannot be an implied renunciation? In other words, the law empowers the wife to renounce by deed, and she cannot be held to have done so in any other way. It can scarcely be seriously doubted that the acceptance of the donation from Miss Symes binds the appellant, Mme. Cuvillier, as much as if the donation had been directly from Mme. Delisle, that is to say Mme. Delisle has as much right to invoke the donation as if she had been herself the donor, so that the question really reduces itself to this: was the deed passed in London on the 8th January 1856, for a valuable consideration, equivalent to a renunciation? On this point the law previous to the Code seems to be clear. The wife could always purge the dower so far as she was concerned, 4 Pothier, Douaire, No. 85. The difficulty arises from the terms of Art. 1443, which puts on the same footing the alienation of the immovable subject to dower, "either with or without the consent of the wife." The article says:—"Such alienation and charges are equally without effect, as regards both the wife and the children." The registration ordinance did not go so far (Sect. 35). But Sect. 36 provides that the wife cannot bind herself for the debt of her husband, otherwise than as *commune en biens*, and this provision is supposed

to prohibit the wife freeing her dower, even as regards herself. This consideration is the motive for the limitation in article 1443 C. C. The Commissioners say in their Fifth Report, p. 240 :—

"The first part of this article amounts to a declaration that the husband cannot sell, alienate nor hypothecate the immoveable subject to dower: such is the ancient law; but the article goes further and declares that the mere consent of the wife does not, in any way, affect her right nor that of the children, unless she have made the express renunciation sanctioned by the following article. Formerly, if the wife made an alienation together with her husband, she did not bind the children, but she obligated herself; so much so that, being the warrantor of the purchaser, she could not disturb him in his enjoyment; by this means she lost the usufruct, but upon her death the children entered into possession of the property, notwithstanding the alienation by their mother, unless they became her heirs. In this respect, the ancient jurisprudence has been changed; the obligation of warranty, contracted by the wife who alienates jointly with her husband, is void and ineffectual, since our legislature has declared (by Ch. 37, C. S. L. C. sec. 52) that the wife cannot obligate herself for her husband, otherwise than in the quality of common as to property. The warranty which she contracts, in the case presented, is therefore null, and for this reason the article declares that the alienation of an immoveable subject to dower, which is effected either with or without the consent of the wife, even with the authorization of her husband, is without effect, not only as regards the children, but also as regards the wife herself; saving the exception contained in the following article."

We have then not only the text of the law but its meaning most authoritatively defined. The wife can no longer bind herself to give up her dower so as to advantage her husband by allowing him to sell or charge his immoveable subject to dower, but that excludes the idea that she cannot abandon her dower for a consideration. It would be to carry the fear of the wife allowing her property to be sacrificed for her husband to an extreme to say that the wife should be declared to be incompetent to better her position, by abandoning her right to dower over a particular property for a consideration as in the present case. Again, it would be to give the wife right to dower twice to say that where the wife alienated for a *bona fide* consideration the deed was to have no effect. The code does not say it, and we should be contravening the sense of the article if we were to give it such an interpretation, and, moreover, we should be violating the most evident of the rules of justice that no one shall enrich himself at the expense of another. Of course Mrs. Cuvillier could not affect her daughter's rights by any renunciation but that made in accordance with article 1444, but Mrs. Fraser has no claim to the property till her mother's death. I think, therefore, that the judgment of the Court below should be confirmed with costs, altering the motive slightly so as to express that the deed in London was not an absolute renunciation to dower permitted by the law since the Registration Ordinance, and I would dismiss this appeal with costs.

Sir A. A. DORION, C. J., delivered judgment in the same sense, reviewing the modifications and changes effected in the law regulating dower, and the power of the wife to renounce her right. The omission of the particular property on Sherbrooke Street was obviously a mere error in the deed, and there was no evidence that Miss Symes was ever aware of this error, or acquiesced in the omission. His Honor arrived at the conclusion that Madame Cuvillier had renounced her dower, and whether that renunciation had the effect of barring the daughter's claim or not, the latter had no right of action until the death of her mother.

The judgment of the Court below was confirmed unanimously, the *considérants* being modified in the following particulars. The paragraph commencing "Considérant que le douaire coutumier est soumis à la règle des statuts réels," was changed to: "Considérant que le douaire coutumier est, d'après l'art. 1442 C. C., soumis à la règle des statuts réels," &c. And the concluding portion of the judgment from the paragraph commencing "Considérant que parmi les lots décrits dans la susdite procuration," &c., was struck out, and the following was substituted :

"Considérant que parmi les lots décrits dans la susdite procuration le lot possédé par la défenderesse ne se trouve pas compris; mais con-

sidérant que la procuration donnée par la dite Dame Erichsen et la renonciation faite en vertu d'icelle avaient pour but d'accomplir la condition sous laquelle la dite donation avait été faite, et pour s'en procurer tout l'avantage tel qu'exprimé dans la dite procuration, et qu'il est évident que c'est par une simple omission que l'héritage sur lequel la dite Dame Erichsen réclame maintenant son douaire, n'a pas été désigné dans la dite procuration et renonciation ;

" Et considérant qu'en outre la dite Dame Erichsen, en acceptant la dite donation, s'est obligée d'en accomplir les conditions, et qu'elle est tenue de réparer l'erreur qu'elle a commise dans la dite procuration et la dite renonciation ;

" Considérant que les dispositions de l'art. 1029 du Code Civil, par lesquelles il est dit qu'on peut stipuler au profit d'un tiers lorsque telle est la condition d'un contrat que l'on fait pour soi-même, ou d'une donation que l'on fait à un autre, rendent inadmissible la prétention de la demande que la condition imposée à la dite Dame Erichsen de renoncer à son douaire ne pouvait pas profiter à la défenderesse ;

" Considérant que dans les circonstances la dite Dame Erichsen ne peut se prévaloir de son omission pour réclamer son douaire, et considérant qu'en supposant que la dite Dame Fraser ne serait pas liée par les actes de la dite Dame Erichsen sa mère, elle n'a aucun droit à la possession du douaire qu'elle réclame du vivant de sa mère la dite Dame Erichsen ;

" Considérant qu'il n'y a pas mal jugé dans le jugement rendu par la Cour Supérieure," &c.

Judgment confirmed.

Bethune & Bethune, for Appellant.

Barnard, Monk & Beauchamp, for Respondents.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ.

McCAFFREY (*mis en cause* below), Appellant, and CLAXTON et al. (plffs. below), Respondents.

Execution—Guardian—C.C.P. 591.

The guardian may be condemned to produce the property or pay the debt and costs ; but he cannot be condemned to pay more than is due by the defendant to the seizing creditor.

The appeal was from a judgment of the Superior Court, District of Bedford, DUNKIN, J., April 16, 1880, ordering the imprisonment of the appellant, a guardian, until he should have paid certain amounts.

Sir A. A. DORION, C.J. (*diss.*), though tthat the judgment was incorrect. As his honor read the rule, the demand was that the guardian produce the goods, and in default of producing them, that he do pay the value thereof. This was set down at the amount of the debt and costs, but the demand was to pay the value, and judgment went accordingly. What the creditor is entitled to demand is that the guardian produce the goods, and, in default of producing the goods, that he pay the debt. Then there is a proviso that upon establishing the value of the goods he may be discharged on paying the value. Here no proof was made of the value of the goods, and the judgment, without any proof of value, condemned the guardian to pay the amount of the debt as the value. His honor was of opinion to reverse the judgment, and to order proof of the value of the goods that were seized. The majority of the Court, however, thought the guardian might be condemned to pay the debt.

RAMSAY, J. The majority of the Court are agreed to reverse the judgment and to give the appellant the costs of the appeal. The difference between the opinion of the majority and that of the Chief Justice is on a matter of detail.

The appellant, a guardian, is imprisoned for failing to produce the effects committed to his keeping. He complains :

" That the judgment, ordering the said imprisonment, is illegal, null and void, in as much as it orders the imprisonment of the appellant, the guardian, until he has paid the full amount of the judgment, interest and costs, or produces the effects seized and placed under his guardianship, without giving any alternative to pay the value thereof. That the said judgment is, moreover, illegal and null, in as much as the appellant, the guardian, is condemned to pay the amount of costs incurred by a third party claiming the right of property in a portion of the goods seized, the judgment for which execution issued, and under which the goods were seized, condemning the defendants, in their respective capacities of executor and universal legatee, and the additional costs incurred, payable by John Mahedy personally."

There is nothing in the objection that the rule did not offer the appellant the alternative to pay the value of the goods. This was decided by the Court of Appeal in the case of *Leverson & Cunningham & Boston, mis en cause*,* and I am not aware of any case that has reversed or in any way put in question that decision. It was before the Code, but article 597 C.C.P. seems to have been carefully drawn so as to preserve the old law. The guardian is condemned on pain of coercive imprisonment to produce the property or to pay the amount due to the seizing creditor. The article then goes on to say: "He may, however, upon establishing the value of the effects which he fails to produce be *discharged* upon payment of such value." This, then, is an exception in his favour, and I take it, open to him at all times, since he can be "discharged" upon payment of such value. He, then, has no need of a reservation in the judgment of a right which he has by law, and of which the judgment could not have deprived him.

The other objection is that he has been condemned to pay costs incurred by a third party claiming the right of property in part of the goods seized. What the law says is that the guardian shall pay the "amount due to the seizing creditor." The rule in this case is somewhat confused in its form. After setting up the failure to produce in accordance with the summons, the rule goes on: "That the said guardian, McCaffrey, is ('be' is probably intended) ordered to produce and hand over to the said sheriff the said moveables, goods and effects seized in this cause, and placed in his care and keeping, and described in the said schedule hereunto annexed, and that in default of his so doing he be *contraint par corps*, and incarcerated in the common gaol of this district, until he has produced the said moveables, goods and effects, mentioned and described in the *procès-verbal* of the seizure thereof, by the said sheriff, and also in the said schedule annexed to the said writ of *venditioni exponas*, and also in the schedule hereunto annexed, or pay the value thereof, to wit, $539.42 currency, being the amount of the debt and all the costs in this cause, with interest on $262.62 currency, from the 2nd of January, 1875, on $3.17 currency, from the 19th day of April, 1875, and on $108.05 currency, from the 20th day of June, 1876, at the rate of six per cent. per annum, unless cause to the contrary be shown on the 15th day of April next (1879), at ten of the clock in the forenoon, or as soon as counsel can be heard, at the Court House, in the village of Sweetsburgh, in the district of Bedford, sitting the said Court, the whole with costs."

He has, therefore, a tender to pay the value, if that had been necessary, and the value is fixed at $539.42, which is, according to the calculation of the party moving, and which is in no wise contradicted, "the amount of the debt and all the costs in this cause." As the *mis en cause* has not contested the value, I do not see how we can interfere and say that the goods were of less value. But the amount of the debt and costs, on its face appears to be more than he has to pay in order to get rid of his imprisonment, by all the amount of the costs on Mahedy's opposition, and this must be deducted. The rule goes on to ask more than this, and more than plaintiffs contend is the value of the goods, and as the judgment following the rule orders the *mis en cause* to be imprisoned not only until he shall have paid $539.42, but also interest over and above their value, I think the judgment must be revised in this respect also. The appeal will therefore be maintained with costs, and the judgment will be modified by deducting the amount of these costs $71 and some cents, and by striking out the subsequent interest.

The judgment is as follows:—

"Seeing that the judgment of the 16th day of April, 1879, declaring the rule issued in this cause absolute, orders that the said Henry McCaffrey, *mis en cause* in the Court below, now appellant, be *contraint par corps* and incarcerated in the common gaol of the District of Bedford until he shall have paid to the Respondents (plaintiffs below) the sum of $539.42, being the amount of the debt and all the costs in this cause, and with interest on $262.62 from the 2nd day of January, 1875, on $317 from the 19th day of April, 1875, and $108.05 from the 20th day of June, 1876, at the rate of six per cent., and condemns the said appellant *mis en cause* in the Court below to pay the costs of the said rule, to be regularly taxed at $28.10, currency;

* 2 L. C. J. 297.

" Seeing that by law the said appellant could not be condemned to pay more than the amount due by the defendant to the seizing creditors ;

" Seeing that in addition to the amount due the seizing creditors, the said judgment condemns the said appellant to pay a sum of $71.30 for costs to which a third party claiming the right of property in a portion of the goods seized was condemned, and which did not form part of the said amount due by the defendant to the seizing creditors, and also the interest on the sum of $317 from the 19th day of April, 1875, instead of on the sum of $3.17 ;

" Seeing that in the said judgment of the 16th of April, 1879, rendered by the Superior Court for the District of Bedford, there is error ;

" Doth reverse, annul and set aside the said judgment, and proceeding to render the judgment the Court below ought to have rendered, doth order that the said Henry McCaffrey be detained in the common gaol of the District of Bedford until he shall have paid to the respondents (plaintiffs below) the sum of $372.84, amount of the condemnation in this cause, with interest upon $262.62 from the 2nd January, 1875, on $3.17 from the 19th April, 1875, and on $108.05 from the 28th June, 1876, and the further sums of $40.05, costs incurred to have the original judgment declared executory against the defendant as representing the late Patrick Mahedy, the original defendant, of $17.50 for costs on writ of *fieri facias*, of $3.20 for costs of *venditioni exponas*, and $30.33 for other costs incurred on said writ of *venditioni exponas*, together with the costs incurred on the rule for *contrainte par corps*, said costs hereby taxed at the sum of $28.10. (Hon. Sir A. A. Dorion, C.J., dissenting.)"

R. & L. Laflamme for appellant.

Lacoste, Globensky & Bisaillon, for respondents.

MONTREAL, June 19, 1880.

Sir A. A. DORION, C. J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

MOAT et al. (plffs. *en gar.* below), Appellants, and MOISAN (petr. below), Respondent.

Sheriff's sale—Misdescription of immoveable.

Where the immoveable sold was described by the Sheriff as comprising certain subdivisions of an official number, as marked on the cadastre, and as fronting on a projected street, and the official plan referred to indicated the existence of a street along the front, leading to the highway, the absence of such street was a ground for vacating the sale under C. C. P. 714.

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., Oct. 31, 1878, setting aside an adjudication to petitioner, respondent.

The question was whether certain lots of land adjudged to the respondent differed so much from the description in the minutes of seizure, that the purchaser was entitled to have the sale vacated under C. C. P. 714.

The judgment of the Court below was as follows :—

" The Court, &c....

" Considering that at the time of the sale and adjudication to the petitioner on the 14th of April, 1875, of the piece of land described in the Sheriff's minutes of seizure as follows, to wit :— ' Deuxièmement : un emplacement situé ' à la Côte St. Martin, dans le Village incorporé ' d'Hochelaga, Paroisse de Montréal, faisant par- ' tie du numéro dix-sept sur le plan officiel et ' le livre de renvoi du dit Village incorporé ' d'Hochelaga, le dit lot de terre contenant les ' lots de subdivision depuis le numéro 146 jus- ' qu'au numéro 174 du dit lot numéro dix-sept, ' les deux compris, le dit emplacement conte- ' nant 725 pieds de front, mesure anglaise, sur ' 148 de profondeur, borné en front à la rue pro- ' jetée ci-dessus mentionnée, en arrière aux hé- ' ritiers Mathew, d'un côté au premier emplace- ' ment décrit aux dites minutes du Shérif, et de ' l'autre côté au lot de subdivision 175 du dit ' lot numéro dix-sept, avec une maison en bois ' sus-érigée ' ; there existed along the whole length of the real estate known and described as number seventeen on the cadastral plan and book of reference for the incorporated Village of Hochelaga a roadway for the use of the proprietors of said number seventeen ; that on the plan of the subdivision of the said number seventeen into lots deposited in the registry office and in the book of reference for the same, there is a strip of land marked as a projected street and numbered on the said plan and in the said book as number 364, of fifty feet wide, reserved by the plaintiffs *en garantie* as a street for the use and advantage of the future purchasers of the said lots ;

"Considering that on or about the 22nd of November, 1877, the petitioner was deprived of the use of an important portion of the said street, to wit: along the whole ten arpents in depth, in consequence of a faculty granted by the said seizing party to one Dame Brien dite Desrochers, wife of Henri Girard, in and by her deeds of title, duly registered;

"Considering that the petitioner has been deprived of his roadway and means of communication from the lots by him purchased to the public highway;

"Considering further that the description of the property sold in this cause and given in the minutes of seizure and advertisement of sale do not agree with the plan deposited in the registry office, nor with the facts, the said lots being given with a depth of only 148 feet with a street of 20 feet wide in front, while they should read as having 178 feet with a street 20 feet wide, or 148 feet, with a street of 50 feet wide;

"Considering that the said variances are material, and that for the said reasons the petitioner had and hath a right to ask that the said sale by the sheriff be vacated;

"It is ordered and adjudged that the sale and adjudication by the sheriff made in this cause to the petitioner on the 14th of April, 1875, of the lots of land above described be, and the same are, vacated and set aside to all intents and purposes;

"And it is also ordered and adjudged that the said Robert Moat and John Moat do jointly and severally reimburse and pay to the petitioner the sum of $1200 with interest from the 20th August, 1875, being the amount by them received as having been collocated therefor out of the proceeds of the sale of the said real estate; and the said John Fair, in his capacity of assignee to Joel C. Baker, is adjudged and condemned to reimburse to the petitioner the sum of $2,150, part of the sum collocated to him and received as proceeds of the said real estate, amounting with the above sum of $1,200 to the total amount of the purchase money paid by petitioner, with interest on the said sum of $2,150 from the 20th August, 1875;

"And the plaintiffs *en garantie* are also condemned jointly and severally to reimburse and pay to the petitioner the said two sums, with interest as aforesaid, as *garants* of the solvency of the said John Fair *es qualité* and Robert Moat and John Moat; and also the interest on the said sum of $3,350 from the 14th of April aforesaid to the 28th of August, 1875, less a sum of $110 as the revenues of the said real estate during that space of time; and they are also condemned to pay petitioner $11 for the costs of the deed of sale and registration thereof, $50 for an *allonge*, $20 for a well, and $12 for the taxes for the year 1875;

"The Court reserving to the petitioner his recourse for any further sum he may have expended since 1875; the whole with costs, etc."

In rendering judgment, his honor made the following observations:—

"This is *a requête en nullité de décrêt*, and the petitioner is the adjudicataire. The land sold is situated at Hochelaga, and the price was $3,350. He alleges, and it is not disputed, that a piece of land, two arpents wide by thirty deep, fronting on the highway, was sub-divided by the plaintiffs *en garantie* (Moat et al.) into building lots to the number of 364. Part of those lots, extending from the highway to a depth of about ten arpents, were sold to one Mrs. Girard by the plaintiffs *en garantie*, and the balance of the land remained the property of the defendants *en garantie* (the Guano Co.), who became insolvent, and Brunet was appointed curator to administer their affairs. An action being instituted by the former proprietors for a part of the purchase money against Moat et al., the first purchasers, they called in as their *garants* the Guano Company, to whom they had sold the balance of the land, and afterwards Brunet, their curator. The remnant of the land was seized and advertised to be sold in three parts, number one being next to the lots sold to Mrs. Girard; number two being the lots adjudged to the petitioner; and number three, at the extremity of the land to another party. There had been a plan deposited at the Registry Office together with a book of reference, showing all the sub-divided lots, with a projected street fifty feet wide, the whole length of the south side of the land from the highway. At the time of the sale, and even before, there had been, where this street was projected, a sort of roadway common to the different owners of the lots. This road remained open until about the middle of November, 1877, when Mrs. Girard closed it by putting up a fence across it at the extremity of her lots, cutting off the other pro-

prietors from access to the highway, and she removed the road to the other side of her lots. The consequence was that the petitioner and the owners of the other parts of the land, only had a road, on the south-west side, as far as Mme. Girard's lots, but there they had to stop short. It appears that Mrs. Girard, who had bought from Moat *et al.*, had the faculty, by her deeds, of opening a road twenty feet wide only, either on the south-west or on the north-east side of the land. The petitioner having bought a piece of this land, with a road on the south-west side, shown by the plan to be a road or street fifty feet wide, complains that he has not got what he bought; and he further alleged that the lots are diminished thirty feet from the measurement given in the plan and book of reference.

"This demand is founded on articles 714 and 715 of the code of procedure, the first giving the grounds, not now necessary to be repeated, on which a Sheriff's sale may be vacated at the suit of a purchaser; the second giving the form of the demand in such case; and the petitioner is within the law in both respects. The demand is also based upon Articles 1508, 1509, 1510 and 1519 of the Civil Code. Art. 1508 says: 'The seller is obliged by law to warrant the buyer against eviction of the whole or any part of the thing sold, by reason of the act of the former, or of any right existing at the time of the sale, and against incumbrances not declared and not apparent at the time of the sale.' Art. 1509 is: 'Although it be stipulated that the seller is not obliged to any warranty, he is, nevertheless, obliged to a warranty against his personal acts; any agreement to the contrary is null.' Art. 1510 reads: 'In like manner, when there is a stipulation excluding warranty, the seller in case of eviction, is obliged to return the price, unless the buyer knew at the time of the sale the danger of eviction, or had bought at his own risk.' Art. 1519 says: 'If the property sold be charged with a servitude not apparent and not declared, of such importance that it may be presumed the buyer would not have bought, if he had been informed of it, he may vacate the sale, or claim indemnity, at his option, and in either case may bring his action so soon as he is informed of the existence of the servitude.' All the parties interested have appeared, and some of them contested the petition. They admit most of the facts, particularly the existence of this road on the south-west side, and the exercise by Mrs. Girard of her option by changing the road to the north-east side, and the refusal to let the petitioner use the road shown on the plan. It is a principle of law, that the seizing party is responsible to the purchaser in the same way as his vendor would be; and in that respect the seizing party and the party seized are both responsible to the purchaser in the same degree; and if the sale is annulled, the creditors who have got the money coming from the forced sale of the land are bound to restore it. C. C. 1586-1587. Applying the articles previously cited to the circumstances of this case, I have no doubt the petitioner is entitled to the relief he asks. Therefore, the judgment is to annul the sale, and to order the parties collocated to restore the money, with costs against the contestants."

Cross, J. (*diss.*), considered that the description by the sheriff was correct. His honor was of opinion that the judgment should be reversed, and the *adjudicataire* held to his position as purchaser.

Sir A. A. Dorion, C.J., remarked that the majority of the Court did not consider that any question of servitude came up here. It was a case that fell under Art. 714 of the Code of Procedure, which enables sheriff's sales to be vacated where the immoveable differs so much from the description that it is to be presumed the purchaser would not have bought had he been aware of the difference. Here the purchaser bought according to a plan of subdivision regularly deposited in the Registry office according to law. By this plan, the lots which he purchased were shown to be on a street leading to the public highway, and this street was referred to in the minutes of seizure as a projected street, that is, one to be opened. But two years after the sale, this street was closed up by Madame Girard, who had obtained the right to do so by a deed from the appellants. There could be no doubt here that the respondent would not have purchased if he had been aware that there was no street communicating with the highway, and he was, therefore, entitled to the relief granted to him by the judgment appealed from.

Ramsay, J., concurred that the description was insufficient, as taken in connection with the plan which was there to be looked at. Besides this, the projected street at the time actually existed in nature, and was visible; there was no paved way, but it was used as a road. The property sold was described as bounded by a projected street, but when it was examined this projected street was a street which ran not only along the back of the property, but a street which ran to the highway, and there was no other means of egress but by this street.

Judgment confirmed.

Coursol, Girouard, Wurtele & Sexton for appellants.

Duhamel, Pagnuelo & Rainville for respondent.